

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 06-0048; 06-0049; 06-0050; 06-0051
Sales Tax and Food & Beverage Tax for September 1, 2002, to August 31, 2005

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ISSUES**I. Sales Tax and Food & Beverage Tax – Collection and Remittance**

Authority: [IC 6-8.1-5-1\(b\)](#); [IC 6-2.5-2-1](#); [IC 6-2.5-6-1](#); [IC 6-2.5-9-3](#); [IC 6-9-25-5](#); [IC 6-9-25-4](#); [IC 6-9-25-6](#); [IC 6-8.1-5-4](#).

Taxpayer protests the Department's assessment of sales tax and food & beverage tax.

STATEMENT OF FACTS

Taxpayer is a small business corporation filing 1120S forms at the federal level and the IT-20S at the state level. Taxpayer's business is a family-style sit-down restaurant open for breakfast, lunch, and dinner seven days a week. The Department audited Taxpayer for the period September 1, 2002, to August 31, 2005. Taxpayer collected sales tax and Food & Beverage tax for the period on the sales of beverages and meals, but failed to remit the taxes to the Department. An assessment for sales tax and Food & Beverage tax was issued. The sales information to compute the taxes was taken from daily cash register Z-tapes and work papers provided by Taxpayer.

The audit report notes that Taxpayer applied for the Amnesty tax provisions for the tax period September 1, 2002, to June 30, 2004. Taxpayer was billed separately under the Amnesty provisions. The tax due for that period is shown as an Amnesty credit. The protest and audit assessment is based on the period July 1, 2004, to August 31, 2005.

Three hearing dates have been scheduled; Taxpayer asked for a last-minute postponement of the hearing on the first two dates, requesting additional time to prepare documentation. The Department rescheduled both times. Taxpayer did not participate at the hearing held on the third mutually-agreed reschedule date. The findings are based on the information in the file.

I. Sales Tax and Food & Beverage Tax – Collection and Remittance**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. [IC 6-8.1-5-1\(b\)](#).

[IC 6-2.5-2-1\(a\)](#) imposes an excise tax, known as the state gross retail tax, on retail transactions made in Indiana. This tax is referred to commonly as "sales tax." [IC 6-2.5-2-1\(b\)](#) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant is required to collect the tax as agent for the state. [IC 6-2.5-2-1\(b\)](#). [IC 6-2.5-6-1](#) states the method and timetable by which a retail merchant is obligated to remit the collected sales tax to the State of Indiana, through the Department of Revenue. [IC 6-2.5-9-3](#) states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of those taxes to the State.

Taxpayer's business is located in Henry County. Henry County adopted the Food & Beverage Tax in 1987. For the periods in questions, the rate is 1 percent of total sales. [IC 6-9-25-5](#). Under [IC 6-9-25-4](#), the seller of food and beverage for immediate consumption is a retail merchant required to collect Food & Beverage Tax on such sales and to remit the tax to the Department. [IC 6-9-25-6](#) states that the imposition, payment, and collection of the Food & Beverage Tax is treated in the same manner as the state gross retail tax.

Taxpayer is a registered retail merchant with the State of Indiana and holds a retail merchant's certificate. It is required to calculate and collect sales tax and the Henry County Food & Beverage Tax from its customers on the meals purchased. Taxpayer has collected the taxes from its customers. Taxpayer has not remitted the taxes to the Department.

[IC 6-8.1-5-4](#) states that taxpayers must keep books and records so that the Department can review them to determine tax liabilities. [IC 6-8.1-5-1\(a\)](#) states that the Department shall make a proposed assessment of tax liability amounts on the basis of the best information available to the Department. Taxpayer has been afforded the opportunity to present records and information to rebut the proposed assessment. Based on the information presented to the Department, the assessment is upheld.

FINDING

The Department denies Taxpayer's protest.

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